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of All Similarly Situated Individuals

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GEORGE VALDEZ, an individual,
RAUL ROMERO, an individual, on
behalf of themselves and all other
similarly situated individuals,

Plaintiffs,

v.

SHAMROCK FOODS COMPANY, an
Arizona Corporation, and DOES 1
through 25, inclusive

Defendants.

Case No. 5:22-CV-1719-SSS-SHK
(Assigned for all purposes to the Hon.
Sunshine S. Sykes)

CLASS ACTION

**NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Filed Concurrently with Plaintiffs' Motion for Attorneys' Fees, Costs, and Claims Administration Costs, Supporting Declarations, and [Proposed] Order]

Date: March 29, 2024

Time: 2:00 p.m.

Ctrm: 2

Before: Hon. Sunshine S. Sykes

NOTICE TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 29, 2024 at 2:00 p.m., or as soon thereafter as the matter can be heard in Courtroom 2 of the United States District Courthouse located at 3470 Twelfth Street, Riverside, California 92501, before the Honorable Sunshine S. Sykes, Plaintiffs George Valdez and Raul Romero (“Plaintiffs”) will and hereby do move this Court for an Order Granting Final Approval of Class Action and PAGA Settlement.

Plaintiffs’ Motion is based on this Notice and the accompanying Memorandum of Points and Authorities and exhibits thereto; the Declaration of Michael H. Boyamian and the respective exhibits; the Declaration of Kusay Ghenniwa re: Notice and Claims Administration (“CPT Group Decl.”); the Proposed Order; this Court’s files and records; and any other evidence, briefing, or argument properly before this Court.

Plaintiffs respectfully request that the Court: (1) grant final approval of the proposed Settlement¹; (2) certify the Class for settlement purposes; (3) find that the Notice was the best practicable notice under the circumstances and satisfied all Constitutional and other requirements; (4) confirm Settlement Class Members who have submitted timely requests for exclusion; (5) confirm as final the Court’s preliminary appointment of settlement Class Counsel; (6) confirm as final the Court’s preliminary appointment of Plaintiffs as class representatives; (7) grant service enhancement awards to class representatives George Valdez and Raul Romero in the amounts of \$10,000.00 and \$5,000, respectively (collectively, not to exceed \$17,500); (8) grant an award of attorneys’ fees² of \$333,333.33 (33-1/3

¹ Capitalized terms herein have the same meaning as in the Settlement Agreement, attached as Exhibit 1 to the Declaration of Michael H. Boyamian in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement (“Boyamian Dec.”), filed herewith.

² Class Counsel is concurrently filing and serving its Notice of Motion and Unopposed Motion for Class Counsel’s Attorneys’ Fees, Costs, Claims

1 percent of the total settlement sum) and litigation costs of \$12,601.91, for a total fee
2 and expense award of \$345,287.82; (9) grant payment to the Labor Workforce and
3 Development Agency in the amount of \$30,000 (75% of the \$40,000 allocated for
4 civil penalties pursuant to the Private Attorneys General (“PAGA”)) for penalties
5 under the Labor Code pursuant to PAGA (“PAGA penalties”); (10) award the
6 settlement administrator, CPT Group, Inc., \$12,000 for claims administration
7 expenses; (11) dismiss the action pursuant to the terms and conditions of the
8 Settlement Agreement; (12) retain jurisdiction over the enforcement and
9 implementation of the Settlement Agreement; and (13) issue related orders as
10 necessary.

11 Respectfully Submitted,

12 Dated: March 1, 2024

BOYAMIAN LAW, INC.

13 By: /S/ Michael H. Boyamian
14 MICHAEL H. BOYAMIAN
15 Attorneys for Plaintiffs and the Putative Class
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26 Administration Expenses, and Service Award to the Class Representative on which
27 is scheduled to be heard on March 29, 2024 in conjunction with Plaintiffs’ Motion
28 for Final Approval.

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1 **I. INTRODUCTION**

2 On December 21, 2023, this Court granted preliminary approval of the class
3 action settlement reached in this action between Plaintiffs George Valdez and Raul
4 Romero (“Plaintiffs”) and Defendant Shamrock Foods Company (“Defendant” or
5 “Shamrock”) (Dkt. 69) (“Dec. 21 Order”). Plaintiffs now seek final approval of the
6 proposed Settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

7 Plaintiffs allege that they and other Putative Class Members were denied basic
8 protections under the California Labor Code while working and performing truck
9 driving services for Defendant. Plaintiffs alleged claims for unpaid wages, minimum
10 wages, overtime pay, failure to provide meal and rest periods, failure to reimburse
11 necessary business expenditures, interest thereon, wage statement and waiting time
12 penalties, and other equitable relief, as well as reasonable attorneys’ fees and costs.
13 After thorough investigation, substantive discovery, and hard fought negotiations,
14 Plaintiffs and Defendant entered into the Settlement to resolve this class action. The
15 Settlement includes a Gross Settlement Amount of One Million Dollars and Zero
16 Cents (\$1,000,000.00), which includes attorneys’ fees and costs, PAGA penalties,
17 enhancement awards to Plaintiffs, the class representatives, and court-approved costs
18 of settlement administration.

19 Notice was mailed to 782 Class Members on January 16, 2024. As explained
20 in detail below, the notice procedures here were adequate.

21 The reaction of the Class has been overwhelmingly positive. The postmark
22 deadline for opt-outs was February 15, 2024. Class Members who had notice
23 packets re-mailed to them had until a maximum of February 28, 2024, to file any
24 opt-outs, disputes, or objections. To date, the settlement administrator, CPT Group,
25 Inc., has received two (2) requests for exclusion from the Settlement. CPT has
26 received two (2) objections to the Settlement but as explained further below, such
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1 objections are incomplete, invalid, and should be voided as the purported objectors
2 do not explain or provide any basis as to their objections. CPT has also not received
3 any disputes concerning the calculation of the applicable workweeks used for
4 determining Class Members' individual settlement share. Therefore, 780 Class
5 Members have chosen to participate in this Settlement.

6 The near-100 percent participation rate in a Class comprised of over seven
7 hundred and eighty individuals confirms that the Settlement is reasonable and in the
8 best interests of the Class. Accordingly, Plaintiffs respectfully request that the Court
9 grant final approval of the Settlement.

10 **II. FACTUAL BACKGROUND**

11 **A. Defendant Shamrock Foods Company**

12 Shamrock is an Arizona-based company licensed by the U.S. Department of
13 Transportation ("USDOT") as an "interstate motor carrier." Defendant is a
14 wholesaler distributor and seller of food products and maintains locations
15 nationwide. It touts itself as "one of the Top 10 largest foodservice distributors
16 nationwide and serves customers throughout the Western United States." Defendant
17 purchases these items from out-of-state vendors for the express purpose of reselling
18 and transporting those goods across the Country, including in California. In
19 California, Shamrock maintains two distribution centers: one in Sacramento,
20 California and the other in Eastvale, California – just on the outskirts of Riverside,
21 California.

22 **B. Plaintiffs George Valdez and Raul Romero**

23 Mr. Valdez is a former employee of Shamrock Foods who worked out of
24 Defendant's Eastvale warehouse/distribution center from May 2018 to February
25 2022. Declaration of George Valdez ("Valdez Decl.") (Dkt. 63-2) ¶ 2. Mr. Valdez's
26 primary work responsibility was transporting food products from Defendant's
27 Eastvale warehouse to Shamrock Foods' corporate customers. Mr. Valdez did not
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1 interface with Defendant's customers or engaged in any sales or customer service
2 activities. As a truck driver, he was required to drive and travel throughout the
3 greater Southern California region to deliver food freight to customers. On a few
4 occasions, Mr. Valdez even traveled to Arizona to fulfill deliveries. Mr. Valdez was
5 also required to complete pre-trip and post-trip inspections, complete safety logs,
6 load goods on the truck, and unload the goods at the delivery location. Mr. Romero
7 was also a local delivery driver for Shamrock Foods having worked from February
8 14, 2022 to April 19, 2023. He, too, worked out of Defendant's Eastvale warehouse.
9 Declaration of Raul Romero ("Romero Decl.") (Dkt. 63-3) ¶ 2. Mr. Romero
10 performed the same work as Mr. Valdez throughout his tenure with Shamrock. Both
11 Plaintiffs were classified as non-exempt, hourly employees throughout their tenures
12 with Defendant.

13 **C. Plaintiffs' Contentions**

14 At its core, Plaintiffs contended that Shamrock did not make meal and rest
15 periods available to Class Members. Boyamian Decl. ¶ 9. This is due because,
16 according to Plaintiffs, Shamrock did not schedule such meal and rest breaks, and as
17 a result, such mandatory breaks were either skipped, taken late, or taken short.
18 Plaintiffs further asserted that Shamrock overloads their schedules with work
19 assignments making meal and rest periods impractical, or nearly impossible to take.
20 *Id.* Said differently, the nature of the work performed by Plaintiffs and Class
21 Members makes it so that meal and rest periods are illusory and as such were simply
22 not provided to them given the high number of assignments and tight schedules.
23 Plaintiffs contend that they were regularly directed to insert an idealized time entry
24 for meal breaks when in reality no such meal break ever occurred. *Id.* Similarly,
25 because Class Members were pressed for time fulfilling deliveries while on the road,
26 performing non-driving tasks such as post-trip inspections, completing paperwork,
27 waiting for loading, and subjecting themselves to a health screening process, were all
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1 done off-the-clock in an effort to not exceed the threshold allowable hours imposed
2 by the Department of Transportation. Id.

3 Class Members likewise were not reimbursed for necessary business
4 expenditures incurred while working for Defendants as they routinely had to rely on
5 their personal cell phones in order to carry out their job duties. Through Plaintiffs'
6 assistance and Class Counsel's efforts, Class Counsel contacted other current and
7 former employees of Shamrock who corroborated the practices Plaintiffs
8 encountered in which Defendants violated the applicable sections of the California
9 Labor Code. Id.

10 **D. Defendant's Contentions**

11 Defendant argued that this matter is not suitable for class treatment (other than
12 for the limited purposes of effectuating settlement here) as it would invite a litany of
13 individualized issues surrounding how Class Members organized their days and
14 conducted their daily work in delivering product for Shamrock's customers. Putting
15 the issue of certification to the side, Shamrock maintained that no class proceedings
16 can be held as Plaintiffs and the Settlement Class executed arbitration agreements
17 requiring dismissal of the class allegations and proceeding with individual
18 arbitrations. While Defendant was unsuccessful at the trial court level in compelling
19 arbitration, with its pending appeal, Shamrock argued that the issue of arbitration
20 was far from settled. As to the merits, Shamrock further argued that Plaintiffs' meal,
21 rest, and unpaid time claims are preempted by the Federal Motor Carrier Safety
22 Administration Act opinion of December 28, 2018 ("FMCSA"). This Opinion
23 served as a complete reversal to the FMCSA's December 24, 2008 decision on the
24 (lack of) preemption of California's meal and rest break laws. This Opinion also is
25 believed to have retroactive effect. The bulk of Plaintiffs' claims and damages
26 calculations all centered on Plaintiffs' and Class Members' claims for meal and rest
27 break premium pay. Boyamian Decl. ¶ 21-33.

1 **III. PROCEDURAL HISTORY**

2 The class action lawsuit was filed on August 5, 2022 in Riverside Superior
3 Court. Defendant then removed this matter to the United States District Court,
4 Central District of California. Boyamian Decl. ¶ 10. Early on, Defendant filed a
5 Motion to Compel Arbitration which was summarily denied on the ground that Mr.
6 Valdez was a “transportation worker” exempt under § 2 of the Federal Arbitration
7 Act. [Dkt. 32] This prompted Defendant to file an interlocutory appeal with the
8 Ninth Circuit [Dkt. 34] which was presently pending at the time of mediation and
9 Shamrock’s Opening Brief due on September 26, 2023. Id.

10 Plaintiffs also initiated class wide discovery simultaneously while briefing was
11 underway on Defendant’s Motion to Compel Arbitration. Boyamian Decl. ¶ 11.
12 While the parties were waiting for the Court’s ruling on Defendant’s Motion, and
13 even following the Court’s ruling when Plaintiff would not stipulate to have the case
14 stayed pending the outcome of Defendant’s appeal [Dkt. 40], class discovery was
15 well underway which eventually led to the production of the class list. [Dkt. 39]. Id.

16 Plaintiff served both Special Interrogatories and Requests for Production of
17 Documents, to which Defendant served objections and responses and produced
18 thousands of pages of documents relating to Defendant’s policies and operations.
19 Defendant served, and Plaintiff responded to, its own Special Interrogatories and
20 Requests for Documents. Boyamian Decl. ¶ 12.

21 On June 23, 2023, the United States Supreme Court issued *Coinbase, Inc. v.*
22 *Beilski* 599 U.S. 736, 143 S. Ct. 1915 (2023) which effectively compelled the district
23 court to stay its pre-trial and trial proceedings while an appeal is pending. [Dkt. 57].
24 Subsequently, and separately, Plaintiff Raul Romero filed a Notice Letter with the
25 Labor Workforce & Development Agency on May 23, 2023. Boyamian Decl. ¶ 13.

26 The parties discussed resolution and agreed to private mediation during the
27 briefing phase related to Defendant’s appeal. Plaintiffs’ Counsel informally
28 requested several categories of information from Defendant that were required in

1 order to evaluate the potential damages and engage in meaningful settlement
2 discussions. Plaintiffs' Counsel closely reviewed the data provided by Defendants to
3 determine the amount of damages potentially available to Class Members. Class
4 Counsel also retained the services of an expert to analyze the various, relevant time
5 and pay data pertaining to the Class. *Id.* at ¶ 14.

6 Plaintiff's Counsel also performed an extensive investigation into the claims at
7 issue, including determining the suitability of the putative class representatives'
8 claims through interviews, background investigations, and analyses of employment
9 files and related records. Armed with the class list and prior to any agreement to
10 participate in mediation, Class Counsel prepared a survey which was then sent to
11 over 619 putative class members. From the 619 surveys sent, 100 putative class
12 members provided meaningful responses to the surveys. The survey participants
13 were further interviewed and provided meaningful insight into their experiences
14 while working at Shamrock and of Defendant's official and unofficial policies and
15 practices. Altogether, these current and former drivers of Shamrock have been
16 unequivocal and unwavering in terms of the treatment they experienced at
17 Shamrock, and in turn, corroborated the essence of what Mr. Valdez and Mr.
18 Romero have alleged in this matter. (Boyamian Decl. ¶ 15.) Class Counsel identified
19 a select group of Class Members who were prepared to submit declarations in
20 support of class certification – if Plaintiffs were successful on appeal in affirming the
21 Court's Order denying Defendant's Motion to Compel Arbitration.

22 Mediation was conducted with Marc Feder on August 31, 2023. Counsel for
23 the Parties fully briefed their positions to the mediator. After a full day of extensive
24 arms-length negotiations by and among the Parties - the Parties were able to reach
25 this Settlement. *Id.* at ¶ 16.

26 As part of the settlement, a Joint Stipulation was filed to administratively
27 reopen this case and lift the stay. The Joint Stipulation also sought to add Raul
28

1 Romero as a named plaintiff in this matter. This Court granted the parties' Joint
2 Stipulation on October 12, 2023 (Dkt. 63). Plaintiffs filed their First Amended
3 Complaint and Defendant answered the FAC on Plaintiffs subsequently moved for
4 preliminary approval of the proposed class action and PAGA settlement. The Court
5 conducted a hearing on December 13, 2023 on Plaintiffs' Motion for Preliminary
6 Approval. The Court was inclined to grant preliminary approval, however, the Court
7 ordered the parties to amend the class notice to include an objection form and opt-out
8 form (Dkt. 67), which the parties subsequently did. The Court ultimately granted
9 preliminary approval of this settlement on December 21, 2023. (Dkt. 69).
10 (Boyamian Decl. ¶ 17.)

11 Based on an independent investigation and evaluation, Plaintiffs' Counsel are
12 of the opinion that the Settlement with Defendant for the consideration and on the
13 terms set forth in the Settlement Agreement is fair, reasonable, and adequate, and is
14 in the best interests of the Class Members, in light of all known facts and
15 circumstances, including the risk of significant delay, the risk of outright denial of
16 claims and recovery in this action, and the risk that if this matter is litigated a Class
17 may not be certified by the Court or that it may later be decertified, the risk that
18 Defendant will prevail on its defenses, as well as potential appellate issues.
19 Boyamian Dec ¶ 18.

20 **IV. TERMS OF THE SETTLEMENT**

21 The complete Joint Stipulation of Class Action and PAGA Settlement
22 ("Settlement Agreement") is attached as Exhibit 1 to the Boyamian Decl.

23 The key terms of the settlement are as follows: Defendant will pay \$1,000,000
24 to the Class to settle this lawsuit. Settlement, § 30(c). There are 780 participating
25 Class Members. CPT Decl., ¶ 13. Plaintiff's Counsel will request attorney fees in
26 the amount of \$333,333.33. Settlement, § 30(1). Plaintiffs will request to be
27 reimbursed for costs in an amount not to exceed \$25,000 (the actual total costs
28

1 incurred by Class Counsel is \$12,601.91). *Id.*; Boyamian Decl. ¶¶ 44, Exh. 4. Class
2 Counsel will request enhancement awards of \$10,000 for George Valdez and \$5,000
3 for Raul Romero (collectively \$15,000). Settlement, § 30(m); Boyamian Decl. ¶¶
4 45, 48.

5 Any settlement funds that ultimately remain unclaimed will *not* revert to
6 Defendant, but instead the unclaimed residual will be paid to the State of California,
7 California Department of Industrial Relations Unpaid Wage Fund, in the Class
8 Members' name. Settlement, §§ 30(h), 30(i);.

9 **V. NOTICE PROCESS, OBJECTIONS AND EXCLUSIONS**

10 Plaintiff's motion for preliminary approval designates CPT Group, Inc. as the
11 settlement administrator in this case. The Settlement provides that CPT shall send
12 the Notice of Settlement of Class Action (the "Notice") by first class mail to the last
13 known addresses of Class Members. Settlement, § 36.

14 On January 8, 2024, CPT received from Defendant a computerized list of 782
15 Class Members. CPT Decl., ¶ 5. CPT formatted the list for mailing purposes,
16 removed duplicate records, and processed the names and addresses through the
17 National Change of Address Database to update any addresses on file with the
18 United States Postal Service. CPT Decl., ¶ 6.

19 On January 16, 2024, CPT caused the Notice to be printed and mailed to the
20 782 names on the original class list. CPT delivered the Notices to the United States
21 Post Office. CPT Decl., ¶ 6.

22 Since the mailing date, CPT received 38 re-mail requests from Class
23 Members. After conducting a thorough search to locate a current mailing address
24 using Accurant, CPT then re-mailed Notices to these Class Members. CPT Decl., ¶ 8-
25 9.

26 Moreover, since mailing the Notices to the Class Members, only 17 Notices
27 have been returned by USPS to CPT as bearing undeliverable addresses. CPT Decl.,
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¶ 7.

The postmark deadline for filing requests for exclusion, objections to the settlement, and disputes of the employment information provided in the Notice was February 15, 2024. To date, CPT has received two (2) opt-outs, approximately .26% of the entire Class. CPT Decl., ¶ 11. Said differently, 99.74% of the Settlement Class has elected to participate in the settlement. More importantly, while CPT has received two (2) separate objections from the Settlement Class, the objections themselves are incomplete and do not provide any basis to substantiate the reason for the objection. CPT Decl., ¶ 12. Outreach efforts by CPT to these Class Members has also not resulted in any meaningful response to explain the basis for the objections. *Id.* Class Counsel is of the opinion that the objections lodged may have been made in error and given the incompleteness should render the objections invalid. Boyamian Decl. ¶ 36. CPT has also not received any contested disputes concerning any of the Class Members' employment information. CPT Decl., ¶¶ 8-11.

VI. LEGAL ARGUMENT

A. The Settlement Meets the Criteria for Final Approval.

Courts strongly favor settlement, particularly in complex class actions. *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *see also Churchill Vill., LLC v. Gen. Elec.* (9th Cir. 2004) 361 F.3d 566, 576. Approval of a class action settlement rests in the sound discretion of the trial court. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.

In determining final approval, the court's inquiry is whether the settlement is "fair, adequate, and reasonable." Fed. R. Civ. P. 23(e)(2). A class action settlement meets this standard when "the interests of the class are better served by the settlement than by further litigation." Manual for Complex Litigation (Fourth) § 21.61 (2004). Rule 23(e)'s primary concern is "the protection of those class members, including the named plaintiffs, whose rights may not have been given due

1 regard by the negotiating parties.” *Ma v. Covidien Holding, Inc.* (C.D. Cal. 2014)
2 2014 U.S. Dist. LEXIS 76359, *4. However, rather than reaching any conclusions
3 on the contested legal and factual issues, a court may “presume that through
4 negotiation, the Parties, counsel, and mediator arrived at a reasonable range of
5 settlement by considering Plaintiff’s likelihood of recovery.” *Villegas v. J.P. Morgan*
6 *Chase & Co.*, (N.D. Cal. 2012) 2012 U.S. Dist. LEXIS 166704, *15-16.

7 In deciding whether a class action settlement is fair, adequate and reasonable,
8 courts in the Ninth Circuit consider the following factors: (1) the strength of the
9 Plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further
10 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the
11 amount offered in settlement; (5) the extent of discovery completed, and the stage of
12 the proceedings; (6) the experience and views of counsel; (7) the presence of a
13 governmental participant; and (8) the reaction of the class members to the proposed
14 settlement. *Rodriguez v. West Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948, 963
15 (overruled on other grounds).

16 As discussed below, these factors weigh heavily in favor of final approval
17 because the benefit of a considerable non-reversionary financial recovery of
18 \$1,000,000 distributed to 780 Class Members outweighs the risks, costs and delays
19 inherent in further class action litigation.

20 1. **The Settlement is Fair Given the Strength of Plaintiffs’ Case**
21 **and the Risk, Expense, Complexity, and Likely Duration of**
22 **Litigation.**

23 The first, second, and third *Rodriguez* factors all support final approval of this
24 Settlement. As to the first prong, Plaintiffs face the difficult task of proving that
25 Defendant violated specific and separate sections of the Labor Code, including but
26 not limited to, minimum wage, overtime, meal and rest period laws, reimbursement
27 laws, and the wider protections of California Labor Code § 1171. Through the
28 assistance of Plaintiffs, Counsel for Plaintiffs was able to receive significant

1 corroboration as to the merits of those violations. However, the uncertainty over
2 whether Plaintiffs will be able to achieve class certification and the appropriateness
3 of class treatment, and whether Plaintiffs will be able to prove the asserted labor
4 code violations make this \$1,000,000 settlement amount for 780 Class Members a
5 genuinely “fair, adequate, and reasonable” result.

6 The second *Rodriguez* factor also supports the final approval of this
7 settlement. When the parties reached the instant settlement, the present suit was
8 stayed pending the outcome of Defendant’s forthcoming appeal to the Ninth Circuit
9 following the denial of their Motion to Compel Arbitration. An appeal would
10 necessarily entail a significant delay of time and resources for any potential towards
11 a class wide recovery. More alarming is if the Ninth Circuit reversed this Court’s
12 decision on Defendant’s Motion to Compel Arbitration, 780 settlement class
13 members would be foreclosed from receiving any type of class action relief. If the
14 Ninth Circuit affirmed this Court’s Order, Plaintiffs would then be tasked with filing
15 their motion for class certification. If Plaintiffs then prevailed, Defendant would
16 likely have brought a motion to decertify the class or move to appeal that order. If
17 the Court was inclined to grant Defendant’s motion for decertification, Plaintiffs
18 would have attempted to rectify any deficiencies and bring a renewed motion for
19 class certification. If that likewise was unsuccessful, then 780 class members would
20 not partake in the relief obtained today.

21 After the certification issue is determined, it is likely that Defendant, would
22 have brought motions for summary adjudication/judgment. Much of this pre-trial
23 litigation would entail multiple briefs and responses from both parties. The summary
24 judgment process itself would take several months, if not a full year, to complete.

25 As to the merits of the class claims, most notably, Plaintiffs and Class
26 Members faced a real daunting possibility that their meal and rest breaks were barred
27 on the basis of preemption by the Federal Motor Carrier Safety Administration Order
28

1 on December 28, 2018. Similarly, Defendant would also have grounds to contest
2 through a dispositive motion as to whether Plaintiffs and Class Members are owed
3 any overtime wages due to the fact that drivers may be required to drive out-of-state
4 and therefore are exempt from state and overtime laws.

5 Should litigation resume, the parties would also have to complete remaining,
6 outstanding discovery before the above motion practice could resume.

7 Moreover, if this case ultimately reaches trial, the trial process itself is likely
8 to be long and complicated. As Plaintiffs allege claims for numerous violations,
9 including unpaid minimum and overtime wages, meal break violations, rest break
10 violations, unreimbursed expenses, and unfair competition, the trial length would be
11 significant.

12 Finally, the third *Rodriguez* factor also favors approval of the instant
13 settlement. While Plaintiffs are confident that the facts of this case are such that
14 class treatment is appropriate, there is some risk that trial will reveal this to not be
15 the case. In particular, Plaintiffs' investigation and the discovery conducted thus far
16 showed that Defendant imposed common policies, whether formally or through a
17 course of conduct, where violations of the Labor Code was systemic and uniform.
18 Nevertheless, if trial testimony reveals that Class Members had the freedom to
19 exercise independently to Defendant's policies and practices, that Class Members
20 utilized practices that was distinct and separate to the practices in place at one of the
21 two distribution centers or terminals Shamrock operated in California, class
22 treatment in such a scenario may become untenable. Put differently, if trial
23 testimony shows variance over how Class Members recorded time worked, breaks
24 taken, schedules, management style at each of the terminals, the suit may then be
25 deemed inappropriate for class treatment.

26 Lastly, it is worth emphasizing that the FMCSA published an Order
27 concluding that California's meal and rest break rules, codified in California Labor
28

Code sections 226.7 and 512 and sections 11 and 12 of IWC Order 9-2001, are preempted, under 49 U.S.C. 31141(c), as applied to property-carrying commercial motor vehicle (CMV) drivers covered by the FMCSA’s hours of service regulations. This Opinion served as a complete reversal to the FMCSA's December 24, 2008 decision on the (lack of) preemption of California's meal and rest break laws. This Opinion also is believed to have retroactive effect as the FMCSA’s March 22, 2019 Legal Opinion of the Office of the Chief of Counsel provided that “FMCSA [P]reemption [D]ecision under Section 31141 precludes courts from granting relief pursuant to the preempted State law or regulation at any time following issuance of the decision, regardless of whether the conduct underlying the lawsuit occurred before or after the decision was issued, and *regardless* of whether the lawsuit was filed before or after the decision was issued.” (Emphasis added). The bulk of Plaintiffs’ claims and damages calculations all centered on Plaintiffs and Class Members’ claims for meal and rest break premium pay. If the Court ruled in favor of Defendant, Plaintiffs and Class Members would recover nothing for their meal and rest break claims.

Had the parties not reached this global compromise, Plaintiffs and Class Members would receive very little, if close to nothing.

2. The Settlement Consideration and Allocation are Fair.

CPT Group has preliminarily calculated the class member settlement awards based on the current Net Settlement Sum of \$572,166.67 and 780 participating Class Members. The settlement awards were calculated by dividing the Settlement Class Member’s Covered Workweeks during the Class Period to the total Covered Workweeks of all the Settlement Class Members during the Class Period and then multiplying that figure to the Net Settlement Sum. The total value of Covered Workweeks attributable to Class Members who do not become Participating Claimants will be added back into the Settlement Pool and divided among each

1 Participating Class Member. This pro-rata share formula to calculate individual
2 settlement awards for the class claims will also be utilized to calculate PAGA
3 payments based on the pay periods worked by PAGA Employees during the relevant
4 PAGA Period. Settlement, §§ 30(h) & 30(i), Exh. 1 to Boyamian Decl.

5 Based on the above calculations, the average claim value for 780 participating
6 Class Members with a \$572,166.67 Net Settlement Amount is \$744.46, and the
7 highest individual settlement payment to be paid will be approximately \$2,378.14,
8 which will be paid to 97 class members. CPT Decl., ¶ 15.

9 “[I]t is well-settled law that a cash settlement amounting to only a fraction of
10 the potential recovery does not *per se* render the settlement inadequate or unfair.
11 Rather, the fairness and the adequacy of the settlement should be assessed relative to
12 risks of pursuing the litigation to judgment.” *Villegas*, 2012 U.S. Dist. LEXIS
13 166704 at *16. (internal quotations and citations omitted).

14 Case law demonstrates that this fractional recovery may be fair and reasonable
15 depending on the circumstances of the case. *See Balderas v. Massage Envy*
16 *Franchising, LLC* (N.D. Cal. July 21, 2014) 2014 U.S. Dist. LEXIS 99966, *16
17 (preliminarily approving settlement “on the low end of the spectrum for class
18 settlement awards receiving approval” where gross settlement amount of \$504,000
19 “represents roughly eight percent of the maximum recovery” and net settlement
20 amount of \$325,000 represents “just five percent.”); *O’Sullivan v. AMN Services,*
21 *Inc.* (N.D. Cal. Feb. 7, 2014) 12-cv-2125 (ECF No. 92) (\$3 million gross settlement
22 amount for a class of 11,685 people – total exposure estimated for the case was \$108
23 million, before penalties and interest); *Scott v. Bimbo Bakeries USA* (E.D. Pa. March
24 5, 2014) No. 2:10-cv-03154 (ECF No. 174) (approving settlement of wage and hour
25 claims alleging independent contractor misclassification for payments of \$900 to
26 each current driver and \$450 to each former driver); *Bautista v. Harvest*
27 *Management Sub* (C.D. Cal. July 7, 2014) No. 2:12-cv-10004 (ECF No. 79) (final
28

1 approval of a \$2.2 million gross settlement amount for wage-and hour violation
2 claims of 14,000-member class).³

3 “[It] is not uncommon for a class action settlement to amount to approximately
4 10% of the total potential value.” *Ma*, 2014 U.S. Dist. LEXIS 76359, at *2 (finding
5 that settlement providing 9.1% of the “actual likely recovery” is within the range of
6 reasonableness”). This is reasonable given the strength of Plaintiffs’ claims and the
7 risks, expenses, and complexity of continued litigation as described above.
8 Boyamian Decl., ¶¶ 20-36.

9 The plan of allocation is also fair and reasonable. The Settlement provides
10 that the settlement fund shall be allocated based, for all intents and purposes, the
11 length of employment.

12 **3. The Settlement Reflects the Informed Views of Experienced**
13 **Counsel and Is the Product of Serious, Arms-Length**
14 **Negotiations Conducted After Extensive Discovery and**
Investigation.

15 The fifth and sixth factors—the informed views of counsel and the discovery
16 conducted to date in the litigation—also support final approval of the Settlement.

17 Prior to filing the complaint, Class Counsel engaged in legal research
18 regarding the potential claims and defenses in the case. Further, Class Counsel
19 investigated the factual basis for the claims through conversations and meetings with
20 Plaintiffs, and by evaluating numerous documents provided by Plaintiffs. Boyamian
21 Dec., ¶¶ 9-10, 37-38.

22 More significantly, Class Counsel embarked on a survey campaign collecting
23 nearly 100 completed surveys from Class Members detailing their work and
24 experience while employed by Shamrock and also reached out to numerous putative
25 class members in order to secure their cooperation and ultimately declarations in
26

27 ³ It is important to note that in these cases, the courts considered the gross settlement amount, not
28 the net settlement amount, as is done here.

1 support of a motion for class certification. While Plaintiffs were prepared to bring
2 forth a comprehensive motion for class certification, Defendant effectively stayed
3 this matter pending their appeal of this Court's denial of Shamrock's Motion to
4 Compel Arbitration. If Plaintiffs were successful at the appellate level, Defendant's
5 intended to file motions to dismiss or motions for summary adjudication/judgment
6 which had the potential to be dispositive to Plaintiffs' alleged claims of meal and rest
7 break violations. As noted above, the meal and rest break claims were the bulk of
8 Plaintiffs' overall damages sought against Defendant. Boyamian Dec., ¶¶ 25-27, 29.
9 The parties therefore entered settlement negotiations with a thorough understanding
10 of the strengths and weaknesses of their respective cases.

11 Class Counsel are experienced in class action litigation and focus on
12 employment wage and hour matters. Boyamian Dec., ¶¶ 2-7. Under these
13 circumstances, Class Counsel's assessment that the Settlement is fair, adequate, and
14 reasonable is worthy of deference. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*
15 (C.D. Cal. 2004) 221 F.R.D. 523, 528 ("Great weight" is accorded to the
16 recommendation of counsel, who are most closely acquainted with the facts of the
17 underlying litigation.").

18 **4. The Lack of Meaningful Opposition by the Class Supports**
19 **Approval.**

20 "It is established that the absence of a *large* number of objections to a
21 proposed class action settlement raises a strong presumption that the terms of a
22 proposed class settlement action are favorable to the class members." *In re*
23 *Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F. Supp. 2d 1036, 1043
24 (internal citations omitted) (emphasis added).

25 As described above, pursuant to the Court's preliminary approval order, CPT
26 mailed the Notice to all Settlement Class Members identified through the data
27 provided by Defendants. CPT Decl., ¶¶ 8, 11. The deadline to object to the
28 Settlement and the deadline to opt-out from the Settlement was February 15, 2024.

1 CPT Decl., ¶¶ 8, 10-11. To date, CPT has received zero valid objections and only
2 two (2) valid opt-outs to the Settlement. CPT Decl., ¶¶ 11-12. While CPT was in
3 receipt of two (2) objections (CPT Decl., ¶ 12), one objection was subsequently
4 rescinded and the other objector has failed to provide any reason, basis, or
5 justification for the purported objection. The forms accompanying the Notice clearly
6 provide that the Objection Form must be completed in its entirety in order to be
7 deemed valid. Class Counsel is therefore of the opinion and conclusion that the
8 remaining objection should be deemed invalid and effectively null and void.
9 Boyamian Dec., ¶ 37.

10 A 99% participation rate and essentially a “zero” 0% objection rate supports
11 the view that the Settlement is fair and reasonable. *Barcia v. Contain-A-Way, Inc.*
12 (S.D. Cal. 2009) 2009 U.S. Dist. LEXIS 17118, *12 (absence of objectors “strongly
13 supports the fairness, reasonableness, and adequacy of the settlement”).

14 **B. Confirmation of the Court’s Provisional Class Certification is**
15 **Appropriate**

16 Plaintiffs also request that the Court confirm its provisional certification order
17 and find that the proposed Settlement Class meets all the requirements under Rule
18 23. Specifically, Plaintiffs ask the Court to finally certify the following class for
19 settlement purposes:

20 all current and former non-exempt employees employed by Shamrock as
21 Delivery Drivers, or any other similarly titled non-exempt, hourly position, in
22 California from August 5, 2018 through December 21, 2023 (the “Class
23 Period”).

24 The provisionally certified class satisfies each of the certification requirements
25 that: (1) the individuals in the settlement Class are so numerous that joinder would
26 be impracticable (780 settlement Class Members); (2) there are common questions of
27 law or fact common to the class; (3) Plaintiffs’ claims are typical of the claims of the
28 absent settlement class members; and (4) Plaintiffs and their counsel will adequately
and fairly represent the interests of the absent settlement class members. *Hanlon,*

1 150 F.3d at 1019; ECF No. 47, 6. In addition, Plaintiffs have established that the
2 Class is maintainable under Rule 23(b)(3) because common questions “predominate
3 over any questions affecting only individual members,” and class resolution “is
4 superior to other available methods for the fair and efficient adjudication of the
5 controversy.” Fed. R. Civ. Pro. 23(b)(3); ECF No. 47, 6-7. Accordingly, Plaintiffs
6 request that the Court finally certify the class for settlement purposes under Rule 23.

7 **C. The Court-Ordered Notice Program Is Constitutionally Sound.**

8 Under Rule 23(e), the Court “must direct notice in a reasonable manner to all
9 Class Members who would be bound by a propos[ed settlement].” Fed. R. Civ. P.
10 23(e)(1) Fed. R. Civ. P. 23(e)(1). Class Members are entitled to receive “the best
11 notice practicable” under the circumstances. *Burns v. Elrod* (7th Cir. 1985) 757 F.2d
12 151, 154. Notice is satisfactory “if it generally describes the terms of the settlement
13 in sufficient detail to alert those with adverse viewpoints to investigate and to come
14 forward and be heard.” *Churchill Vill., L.L.C.*, 361 F.3d at 575 (internal citations
15 omitted). Moreover, notice that is mailed to each member of a class “who can be
16 identified with reasonable effort” constitutes reasonable notice. *Eisen v. Carlisle &*
17 *Jacquelin* (1974) 417 U.S. 156, 177. For any certified Rule 23(b)(3) class, the notice
18 must inform Class Members “that the court will exclude from the class any member
19 who requests exclusion, stating when and how members may elect to be excluded.”
20 Fed. R. Civ. P. 23(c)(2)(B).

21 The final Notice, submitted as Exhibit B to the Settlement, explains the nature
22 of the action and the terms of the Settlement (including the Settlement Amount, how
23 individual Settlement awards will be calculated, the attorneys’ fees to be paid, the
24 claims that will be released). It also explains how the Class Members may receive a
25 portion of the Settlement, be excluded from the Settlement, or object to the
26 Settlement. As to the latter two items, the Notice also includes an (1) Opt-Out Form,
27 and (2) Objection Form as ordered by the Court. (Dkt. 67) This information satisfies
28

1 Rule 23(e). *See, e.g., Villegas* 2012 U.S. Dist. LEXIS 166704, at * 23 (approving a
2 notice containing the same categories of information).

3 The notice plan provided for in the Settlement and approved by the Court in its
4 Dec. 21 Order satisfies the notice standard for all persons who were mailed notice.
5 Class Counsel formatted this Notice in an easy-to-read manner. The Notice
6 encouraged Class Members to contact the Settlement Administrator or Class Counsel
7 with any questions and provided their telephone numbers, mailing addresses, and/or
8 web contact information. Boyamian Decl., ¶ 36, Ex. 1-B.

9 Accordingly, the Notice and Notice plan fulfilled all requirements of adequate
10 notice and should be duly approved. *See Torrisi v. Tucson Elec. Power Co.* (9th Cir.
11 1993) 8 F.3d 1370, 1374-75; Fed. R. Civ. P. 23(c)(2).

12 **VII. CONCLUSION: THE COURT SHOULD GRANT PLAINTIFFS'**
13 **MOTION FOR FINAL APPROVAL OF THIS SETTLEMENT**

14 For the foregoing reasons, Plaintiffs respectfully request that the Court grant
15 final approval of the Settlement.

16 Dated: March 1, 2024
17 Respectfully Submitted,
18 BOYAMIAN LAW, INC.

19 By: /S/ Michael H. Boyamian
20 MICHAEL H. BOYAMIAN
21 Attorneys for Plaintiffs and the Putative Class
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 550 North Brand Boulevard, 15th Floor, Glendale, California 91203. On March 1, 2024, I served, in the manner indicated below, the foregoing document described as:

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEREOF

on the interested parties in this action as follows:

FISHER & PHILLIPS, LLP

Andrew J. Sommer (SBN. 192844)

Ariella Kupetz (SBN. 332736)

Email: asommer@fisherphillips.com

Email: akupetz@fisherphillips.com

444 S. Flower Street, Suite 1500

Los Angeles, CA 90071

Telephone: (213) 330- 4500

Attorneys for Defendant SHAMROCK FOODS COMPANY

BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Glendale, California, with postage thereon fully prepaid. I am readily familiar with the firms's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the service herein attested to (C.C.P. §1013(c)(d)).

BY FACSIMILE: caused such document to be transmitted via facsimile to the offices of the addressee(s). (C.C.P. § 1013(a)(e)(f)).

BY OVERNIGHT DELIVERY: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressee(s). (C.C.P. §1013(c)(d)).

X BY ELECTRONIC SERVICE: by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth above.

X STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

FEDERAL: I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on March 1, 2024 at Glendale, California.



Cynthia Parra